

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
January 12, 2005

TOM PUTMAN  
R&ROG

OFFICE OF  
MANAGING DIRECTOR

Walter H. Sonnenfeldt, Esq.  
Walter Sonnenfeldt & Associates  
5600 Wisconsin Avenue  
Suite 1504  
Chevy Chase, MD 20815

Re: ORBCOMM LLC and ORBCOMM License Corp.  
Request for Waiver of FY 2002 Regulatory Fee  
Fee Control No. 00000RROG-03-092

Dear Mr. Sonnenfeldt:

July 30, 2003

This is in response to your request dated February 14, 2003, and supplemented July 30, 2003, filed on behalf of ORBCOMM LLC and its wholly-owned subsidiary ORBCOMM License Corp. (collectively, ORBCOMM) for a waiver and deferral of the Fiscal Year (FY) 2002 regulatory fees associated with FCC Call Signs S2103, E940534-E94038, and E990057-E990061 on the basis of financial hardship. Specifically, you request to supplement the record following the decision of the Commission's Office of Managing Director dismissing ORBCOMM's initial request for a waiver and deferral of the FY 2002 regulatory fees. See Letter from Mark A. Reger, Chief Financial Officer, Office of Managing Director, to Walter H. Sonnenfeldt, Esq. (dated Jan. 15, 2003) (*ORBCOMM Letter*). Our records reflect that you have not paid the \$43,600.00 total amount at issue here for FY 2002.

In the *ORBCOMM Letter*, we explained that, in establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995). In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation or similar items are considered funds available to pay the fees.

In support of your initial request for waiver of the FY 2002 regulatory fees on the grounds of financial hardship, you submitted a declaration dated February 14, 2003 from Don Franco, ORBCOMM's Chief Financial Officer, together with a consolidated balance sheet and statement of operations for the period ended December 31, 2002 (*First Declaration and Balance Sheet*). We found that the pleading that you submitted on behalf of ORBCOMM and the supporting declaration did not provide the information the

Commission requires and failed to establish a compelling case of financial hardship. We therefore dismissed ORBCOMM's request for waiver of the FY 2002 regulatory fees with leave to refile together with appropriate supporting documentation.

You now assert that ORBCOMM "continues to operate on a monthly negative net operating income basis" and that ORBCOMM "cannot afford to pay the [FY 2002 regulatory fee] . . . without suffering severe financial hardship." In support, you submit a further declaration dated July 30, 2003 from Don Franco, together with a table entitled "Compensation to ORBCOMM [LLC] Principals & Record of Monies Invested 2001 - 2002" (*Second Declaration and Compensation Table*). The *Second Declaration and Compensation Table* defines "Principals" as "owners of ORBCOMM [LLC] and/or its controlling parent company ORBCOMM Holdings LLC." In a subsequent communication, you state that "the disclosures made on the record [regarding compensation] cover all ORBCOM[M] [o]fficers of record for the periods for which waivers were sought." You further state that "[n]o other employee salaries were at (or anywhere near) the level of the salaries of Messrs. Eisenberg, Franco, or Hoffmann [i.e., persons identified in the *Second Declaration and Compensation Table* as officers and principals of ORBCOMM LLC] during the periods in question."

Our review of your submissions, including the *First Declaration and Balance Sheet*, the supplemental information on the *Second Declaration and Compensation Table*, and your responses to staff inquiries, indicates that ORBCOMM suffered a financial loss in the 2002 calendar year, which was only partially offset by depreciation and amortization, and compensation paid to its principals and officers. Given that ORBCOMM suffered a financial loss in calendar year 2002, we grant your request for a waiver of the regulatory fees for FY 2002 associated with FCC Call Signs S2103, E940534-E94038, and E990057-E990061.

You have also requested confidential treatment of the material that you submitted with your request for fee relief. Pursuant to section 0.459(d)(1) of the Commission's rules, 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your regulatory fee is received, you will be notified and afforded the opportunity to respond at that time.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



for Mark A. Reger  
Chief Financial Officer